

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

TERESA PARSONS,

No. 3:12-cv-00083-HU

Plaintiff,

**FINDINGS AND
RECOMMENDATION**

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

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Attorney for Plaintiff

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Attorneys for Defendant

1 HUBEL, Magistrate Judge:

2 Before the Court is Plaintiff Teresa Parsons' ("Plaintiff")
3 unopposed motion for attorney's fees pursuant to the Equal Access
4 to Justice Act ("EAJA"), 28 U.S.C. § 2412. Plaintiff's counsel
5 seeks approval of an EAJA award in the amount of \$6,859.93. For
6 the reasons that follow, Plaintiff's motion (Docket No. 22) for
7 EAJA fees should be granted.

8 **I. FACTS AND PROCEDURAL HISTORY**

9 On January 29, 2008, Plaintiff applied for disability
10 insurance benefits ("DIB") and supplemental security income
11 benefits ("SSI") under Titles II and XVI of the Social Security
12 Act. Both of Plaintiff's applications alleged a disability onset
13 date of November 1, 2006. The applications were denied initially
14 on June 17, 2008, and upon reconsideration on October 23, 2008.
15 Plaintiff appeared and testified at a hearing held on February 26,
16 2010, before Administrative Law Judge ("ALJ") Caroline Siderius.
17 The ALJ issued a decision denying Plaintiff's claim for benefits on
18 March 12, 2010. Plaintiff then requested review of the ALJ's
19 decision, which was subsequently denied by the Appeals Council on
20 November 14, 2011. As a result, the ALJ's decision became the
21 final decision of the Commissioner of Social Security
22 ("Commissioner") that was subject to judicial review.

23 On January 17, 2012, Plaintiff filed the present action,
24 seeking judicial review of the Commissioner's decision denying her
25 applications for DIB and SSI. On September 19, 2013, Judge Mosman
26 adopted this Court's Findings and Recommendation in the above-
27 captioned case, recommending that the Commissioner's decision be
28 reversed and remanded for further proceedings. Essentially, this

1 Court agreed with Plaintiff that: (1) the ALJ erred in failing to
2 find that her carpal tunnel syndrome was a severe impairment; and
3 (2) the ALJ's error at step two of the five-step sequential
4 evaluation process was not harmless. Plaintiff's unopposed motion
5 for EAJA fees followed on December 12, 2013.

6 **II. DISCUSSION**

7 **A. Substantial Justification**

8 EAJA requires an award of attorneys' fees to the prevailing
9 plaintiff in a social security case, "unless the court finds that
10 the position of the United States was substantially justified
11 or . . . special circumstances make an award unjust." 28 U.S.C. §
12 2412(d). The Commissioner's lack of opposition to the pending fee
13 request demonstrates that her position was not substantially
14 justified here, and the Court agrees that it was not.

15 **B. Reasonableness of the EAJA Request**

16 If the position of the Commissioner is not "substantially
17 justified," then the Court has discretion to determine whether the
18 requested fees are reasonable. *Sanford-Murray v. Astrue*, No.
19 3:11-cv-01049-SI, 2013 WL 54018, at *3 (D. Or. Jan. 3, 2013)
20 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 436-37 (1983)). The
21 critical factor in evaluating the reasonableness of the EAJA
22 request is the "degree of success attained." *Id.* Although
23 deference should generally be given to the winning lawyer's
24 professional judgment, "a district court can impose a reduction of
25 up to 10 percent—a 'haircut'—based purely on the exercise of its
26 discretion and without more specific explanation." *Costa v. Comm'r*
27 *of Soc. Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012) (quoting
28 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)).

1 A more specific explanation is required, however, "where the
2 district court . . . cut[s] the number of hours by twenty to
3 twenty-five percent." *Id.*

4 As an initial observation, the Court notes that Plaintiff's
5 counsel has submitted an extremely detailed itemization, with
6 specific dates and times regarding each and every task that was
7 completed. The bulk of counsel's time was spent on: (1) reviewing
8 the 800-page transcript; (2) outlining, drafting and editing the
9 20-page opening brief; (3) drafting the 9-page reply brief; and (4)
10 drafting the 6-page objection after reviewing this Court's 28-page
11 Findings and Recommendation. With respect to items (1) and (2),
12 counsel spent a total of approximately 18.5 hours combined. With
13 respect to items (3) and (4), counsel spent a total of
14 approximately 9.2 hours combined. The total time spent on items
15 (1)-(4) amounts to 27.7 of the 39 hours claimed.

16 In the Court's view, and apparently the Commissioner's as
17 well, Plaintiff's counsel's EAJA fee request is reasonable and
18 deference should be given to his professional judgment as to how
19 much time he was required to spend on this case. That is
20 particularly true where, as here, the social security practitioner
21 maintains and submits meticulous time records in support of an
22 agreed-upon lesser amount of EAJA fees (*i.e.*, a self-imposed
23 haircut).

24 As to the calculation of the award, the EAJA sets a \$125 per
25 hour ceiling "unless the court determines that an increase in the
26 cost of living . . . justifies a higher fee." 28 U.S.C. §
27 2412(d)(2)(A). To adjust for the cost of living, the Ninth Circuit
28 applies the national Consumer Price Index for All Urban Consumers

(the "CPI-U"), not seasonally adjusted, and applying the "all items" index. *Jones v. Espy*, 10 F.3d 690, 692-93 (9th Cir. 1993). The cost-of-living increase is "calculated by multiplying the \$125 statutory maximum hourly rate by the . . . CPI-U for the years in which the attorney's work was performed and dividing by the CPI-U figure for March 1996 (155.7), the effective date of the statutory maximum hourly rate." *Nadarajah v. Holder*, 569 F.3d 906, 918 (9th Cir. 2009) (citing *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005)).

The applicable statutory maximum hourly rates under the EAJA, adjusted for increases in the cost of living, are as follows: 2013-\$187.01 (\$125 multiplied by 233.049, divided by 155.7); 2012-\$184.32; and 2011-\$180.59. See *Shreves v. Colvin*, No. CV-11-8076-PCT, 2013 WL 4010993, at *4 n.2 (D. Ariz. Aug. 6, 2013). Multiplying counsel's requested hours for the respective years results in attorney fees of \$397.30 for 2011 (2.2 hours multiplied by \$180.59); \$4,386.82 for 2012 (23.8 hours multiplied by \$184.32); \$2,431.13 for 2013 (13.0 hours multiplied by \$187.01); and a total of \$7,215.25 for all three years. However, the parties have agreed on a lesser fee of \$6,859.93.

III. CONCLUSION

For the reasons stated, Plaintiff's motion (Docket No. 22) for EAJA fees should be granted, and Plaintiff's counsel should be awarded \$6,859.93 in EAJA fees.

IV. SCHEDULING ORDER

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due **April 14, 2014**. If no objections are filed, then the Findings and Recommendation will go

1 under advisement on that date. If objections are filed, then a
2 response is due **May 1, 2014**. When the response is due or filed,
3 whichever date is earlier, the Findings and Recommendation will go
4 under advisement.

5 Dated this 24th day of March, 2014.

6 /s/ Dennis J. Hubel

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8 DENNIS J. HUBEL
9 United States Magistrate Judge
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